

ZONING BYLAW AMENDMENT/Floodplain Regulations
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ARTICLE NO. #: Floodplain Regulations

To see if the Town will vote to amend Chapter 179 Zoning, Article II Establishment of Districts, Section 179-7 as follows (~~striketrough~~ text to be deleted, **bold underlined** text is new):

§ 179-7. Floodplain District.

The Floodplain District is established as ~~no~~ **an** overlay district. All uses otherwise permitted in the underlying district are allowed, provided that they meet the following additional requirements, as well as those of the Massachusetts State Building Code dealing with construction in floodplains and coastal high hazards.

A. Statement of purpose. The purposes of the Floodplain District are to:

- (1) Regulate development in areas subject to coastal storm flowage, particularly high hazard velocity zones, in order to minimize threats to public safety, potential loss of life, personal injury, destruction of property, and environmental damage inevitably resulting from storms, flooding, erosion and relative sea level rise.
- (2) Enable safe access to and from coastal homes and buildings for homeowners and emergency response personnel, such as police, fire and rescue departments or other emergency response officials.
- (3) Reduce or prevent public health emergencies resulting from surface and ground water contamination from inundation of or damage to sewage disposal systems and storage areas for typical household hazardous substances.
- (4) Minimize monetary loss and public health threats resulting from storm damage to public facilities (water and gas ~~warns~~ **mains**, electric, telephone lines, streets, bridges, etc.). Avoid the loss of utility services which, if damaged by flooding, would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding.
- (5) Eliminate costs associated with the response to and cleanup of flooding conditions.
- (6) Reduce damage to public and private property resulting from flooding waters.

B. Definitions. As used in this section, the following words shall have the meanings specified herein:

AREA OF SPECIAL FLOOD HAZARD -- The land in the floodplain within a community, subject to a one-percent or greater chance of flooding in any given year. The area may be designated on a FIRM as Zone A, ~~A1-30 or V1-30~~ **AE or VE**.

BASE FLOOD -- The flood having a one-percent chance of being equaled or exceeded in any given year.

COASTAL HIGH HAZARD AREA -- The area subject to high-velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a FIRM as Zone V1-30 VE.

DEVELOPMENT -- Any man-made change to improved or unimproved real estate, including but not limited to building or other structures, construction, mining, extraction, dredging, filling, grading, paving, excavation or drilling activity or operation.

DISTRICT -- Floodplain District.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION -- A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be fixed (including, at minimum, the installation of utilities, the construction of streets, and either final site grading or pouring of concrete pads) is completed before the effective date of this section.

EXPANSION TO AN EXISTING MANUFACTURED HOMEPARK OR SUBDIVISION -- The preparation of additional sites by the construction of facilities for servicing lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or pouring of concrete pads).

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) -- Administer^s the National Flood Insurance Program (NFIP). FEMA provides a nationwide flood hazard mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

FLOOD INSURANCE RATE MAP (FIRM) -- An official map of a community on which FEMA has delineated both areas of special flood hazard and risk premium zones applicable to the community.

FLOOD INSURANCE, STUDY -- An examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

FLOODWAY -- The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

LAND SUBJECT TO COASTAL STORM FLOWAGE -- Land subject to inundation caused by coastal storms up to and including the one-hundred-year flood, surge of record, or flood of record, whichever is greater. The one-hundred-year flood (or base flood as it is also referred to) means the flood having a one-percent chance of being equaled or exceeded in any given year. The seaward limit is mean low water.

LOWEST FLOOR -- The lowest floor of the lowest enclosed areas (including basement or cellar). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of NFIP Regulations 60.3.

MANUFACTURED HOME -- A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a

permanent foundation when connected to the required utilities. For purposes of the application of this Floodplain District Bylaw, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

MANUFACTURED HOME PARK OR SUBDIVISION -- A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

NATIONAL FLOOD INSURANCE PROGRAM (NFIP) -- Is administered by the Federal Emergency Management Agency (FEMA).

NEW CONSTRUCTION -- For purposes of the application of this Floodplain District Bylaw, "new construction" shall mean structures for which the start of construction commenced on or after the effective date of this Floodplain District Bylaw. For the purpose of determining insurance rates, "new construction" means structures for which the start of construction commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later.

NEW MANUFACTURED HOME PARK OR SUBDIVISION -- A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of this Floodplain District Bylaw.

ONE HUNDRED YEAR FLOOD -- See "base flood."

REGULATORY FLOODWAY -- See "floodway."

SPECIAL FLOOD HAZARD AREA -- An area having special flood and/or flood related erosion hazards, and shown on a FIRM as Zone A, A1-30, V1-30 **AE, VE.**

START OF CONSTRUCTION -- Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, or floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE -- For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home. For NFIP insurance coverage purposes, "structure" means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction,

alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

SUBSTANTIAL DAMAGE -- Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT -- Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed.

ZONES

- (1) **ZONE A** -- The one-hundred-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local or other data.
- (2) **ZONE A1-A30 AE** -- The one-hundred-year floodplain where the base flood elevation has been determined.
- (3) ~~ZONES B and C~~ **X** -- Areas identified in the community Flood Insurance Study as areas of moderate or minimal flood hazard.
- (4) ~~ZONE V1-V30~~ **VE** -- Special flood hazard areas along a coast subject to inundation by the one-hundred-year flood with additional hazards due to velocity (wave action). Base flood elevations have been determined.

C. Floodplain District boundaries and base flood elevation and floodway data.

~~(1) The floodplain District is herein established as an overlay district. The Floodplain District includes all special flood hazard areas designated on the Town of Brewster FIRM issued by FEMA for the administration of the NFIP dated May 17, 1993, as ZONES A, A1-30, and V1-30 which indicates the one-hundred-year regulatory floodplain. The exact boundaries of the District may be defined by the one-hundred-year base flood elevations shown on the FIRM and further defined by the Flood Insurance Study Booklet dated December 19, 1998. The FIRM and Flood Insurance Study booklet are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Commissioner and Conservation Commission.~~

(1) The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within the Town of Brewster designated as Zone A, AE, or VE on the Barnstable County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Barnstable County FIRM that are wholly or partially within the Town of Brewster are panel numbers 25001C0394J, 25001C0413J, 25001C0414J, 25001C0416J, 25001C0417J, 25001C0418J, 25001C0419J, 25001C0438J, 25001C0582J, 25001C0584J, 25001C0601J, 25001C0602J, 25001C0603J, 25001C0606J, 25001C0607J and 25001C0626J dated July 16, 2014. The exact boundaries of the District may be defined by

the 100-year base flood elevations shown on the FIRM and further defined by the Barnstable County Flood Insurance Study (FIS) report dated July 16, 2014. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Commissioner and Conservation Commission.

- (2) Floodway data. In Zone A and A1-30 **AE** along watercourses that have not had a regulatory floodway designated, the best available federal, state, local or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
 - (3) Base flood elevation data. Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or five acres; whichever is the lesser, within unnumbered A zones.
 - (a) Within Zone A, where the base flood elevation is not provided on the FIRM, the applicant shall cause a qualified professional to provide any existing base flood elevation data, which data shall be reviewed by the Building Commissioner/Zoning Agent for its reasonable utilization toward meeting the elevation or floodproofing requirements, as appropriate, of the State Building Code.
 - (b) The Wetlands Protection Act may require applicants to determine base flood elevation information by engineering calculations using whichever specified methodology is most accepted by the Brewster Conservation Commission.
- D. Notification of watercourse alteration. In a riverine situation, the property owner and/or applicant shall notify the following of any alteration or relocation of a watercourse:
- (1) Adjacent communities.
 - (2) NFIP State Coordinator
Massachusetts Office of Water Resources **Department of Conservation and Recreation**
251 Causeway Street. Suite 600-700
Boston, MA 02114-2104
 - (3) NFIP Program Specialist
FEMA Region I, Rm. 462
J. W. McCormack Post Office & Courthouse
99 High Street, 6th Floor
Boston, MA 02109 **02110**

E. Use regulations.

(1) All provisions of the Code of the Town of Brewster, Chapter 179, shall remain applicable within the Floodplain District; provided, however, where the Floodplain District Bylaw imposes additional or conflicting regulations, the more stringent local regulations shall prevail. All development in the Floodplain District, including structural and nonstructural activities, whether permitted by right or by special permit, must be in compliance with (Chapter 131, Section 40, of the Massachusetts General Laws and with the following:

- (a) Section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (currently 780 CMR ~~3107.0.~~, ~~“Flood Resistant Construction”~~)[a1]
 - (b) Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00).
 - (c) Inland Wetlands Restriction, IMP (currently 310 CMR 13.00).
 - (d) Coastal Wetlands Restriction, DEP (currently 310 CMR 12.00).
 - (e) Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Tile 5).
 - (f) Brewster Wetlands Protection Bylaw (currently Chapter 172, Brewster Town Code).
 - (g) Brewster Wetlands Conservancy District (currently Chapter 179, Article II, § 179-6, Brewster Town Code).
- (2) Any departure from the provisions and requirements of the above-referenced state or local regulations may only be granted in accordance with the required variance procedures of these state or local regulations.

F. Recommended uses. The following uses, which present low flood damage potential and are unlikely to cause obstructions to flood flows, are encouraged, provided they are permitted in the underlying district and do not require structures, fill, or the storage of either materials or equipment.

- (1) Agricultural uses such as farming, grazing, truck farming, horticulture, etc.
- (2) Forestry and nursery uses.
- (3) Outdoor recreational uses, including play areas, nature study, boating, fishing and hunting where otherwise legally permitted.
- (4) Conservation of water, plants and wildlife.
- (5) Wildlife management areas, foot, bicycle, and/or horse paths and bridges provided such uses do not affect the natural flow pattern of floodwaters or of any watercourse.

- (6) Temporary nonresidential structures used in connection with fishing, hunting, bird watching, growing, harvesting, storage, or sale of crops raised on the premises.
- (7) Buildings and uses lawfully existing prior to the adoption of these provisions.

G. Use limitations.

- (1) Man-made alteration of sand dunes within Zones ~~V4-30~~ **VE** increase potential flood damage is prohibited.
- (2) All new construction within Zones ~~V4-30~~ **VE** is required to be located landward of the reach of mean high tide.
- (3) All subdivision proposals shall be reviewed to assure that:
 - (a) Such proposals minimize flood damage;
 - (b) All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
 - (c) Adequate drainage is provided to reduce exposure to flood hazards.
- (3) Existing contour intervals of site and elevations of existing structures must be included on plan proposals.

H. Administration.

- (1) There shall be established a routing procedure which will circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, Town Engineer and Building Commissioner for comments which will be considered by the appropriate permitting board prior to issuing applicable permits.
- (2) The Building Inspector shall require the applicant to cause a qualified professional to provide records of elevation and floodproofing levels for new construction or substantial improvement within the flood district.

- I. Severability. If any provision of this section should be disapproved by the Attorney General or invalidated by a court of competent jurisdiction, the remainder of the section shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this § 179-7 shall not affect the validity of the remainder of the Town of Brewster's Zoning Bylaw.

Summary:

Following a recent update of the Flood Insurance Rate Maps, the Town is required to update its Floodplain District by-law to reflect changes in terminology and updates in map information. These changes do not impact the scope or

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intent of the by-laws. The changes to the Flood Insurance Rate Maps go into effect on July 16, 2014. To see if the status of your property has changed, copies of the revised flood maps are available at the Selectmen's Office, and on the Cape Cod Commission website.